

## LAW &amp; POLICY GROUP

**GRIST****ROUNDUP OF SELECTED STATE HEALTH DEVELOPMENTS — THIRD-QUARTER 2019**

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Employer reporting for state or local individual health coverage mandates drew regulatory action in Massachusetts, New Jersey, and Washington, DC, during the third quarter of 2019. Other health coverage initiatives receiving attention included San Francisco's updated Health Care Expenditure (HCE), a new Florida association health plan (AHP) law, and Vermont's assessments for "uncovered" employees. Efforts to tamp down prescription drug costs and regulate pharmacy benefit managers (PBMs) continued, and California tinkered with its sweeping privacy law. States remained active in expanding telehealth, revising insurance laws, and enhancing leave rights. Changes to several states' employment laws have benefit implications, as do legal developments that affect domestic partnerships and common-law marriages in California and South Carolina.

**INDIVIDUAL HEALTH INSURANCE MANDATE REPORTING**

Massachusetts, New Jersey, and Washington, DC, issued information and guidance on individual health insurance reporting obligations for employers in those jurisdictions. Under the Massachusetts mandate, which dates back to 2007, employers must send notices to covered employees who reside in the state and to the state Department of Revenue by Jan. 31, 2020. In contrast, first-time reports from employers in New Jersey are due by March 31 and in Washington, DC, by June 30. Both jurisdictions will let employers submit their federal health coverage reports on employees to satisfy the local requirement.

**District of Columbia**

Washington, DC's individual health coverage mandate will bring new reporting obligations for employers with health plans covering at least 50 employees and one DC resident, as well as health insurers providing minimum essential coverage (MEC) to DC residents. The annual reports are first due June 30, 2020, for 2019 coverage. New guidance ([Notice 2019-04](#)) answers some FAQs about what the DC reports will

involve. Employer reporting to the [DC Office of Tax and Revenue](#) will incorporate the IRS forms that employers and insurers currently use to report coverage offers.

### Massachusetts

Employers offering health benefits to employees who reside in Massachusetts may need to prepare for [minimum creditable coverage](#) (MCC) reporting by the end of January 2020. Massachusetts requires residents to maintain MCC, and employers that provide qualifying health coverage to state residents must report certain data to the state and distribute employee notices (Form MA 1099-HC). Employers offering health insurance to Massachusetts residents should confirm that the insurer will handle MCC reporting. Employers sponsoring self-insured plans for Massachusetts residents will need to verify that their third-party administrators (TPAs) will file the reports and may soon be asked to complete MCC attestation forms.

### New Jersey

New Jersey [guidance](#) on individual health coverage reporting specifies that employers and other MEC providers for state residents must transmit coverage returns for the 2019 tax year through the state's [system for processing W-2 forms](#) by March 31, 2020. The returns must contain the information required on IRS Forms [1094-C](#) and [1095-C](#). The state encourages companies to send data for only New Jersey residents but will accept the same 1094/1095 files sent to the IRS, even if they include data for out-of-state residents.

## STATE HEALTH COVERAGE INITIATIVES

In addition to pursuing ACA [Section 1332 innovation waivers](#), states have taken advantage of short-term insurance plans and explored other coverage options. In California, San Francisco has updated 2020 expenditure rates for the [Health Care Security Ordinance](#) (HCSO). Florida will allow small groups to form AHPs meeting recent federal rules that are currently on hold due to litigation. New Jersey will establish its own health insurance exchange, expected to be operational in 2021. Vermont has updated guidance for employers facing an assessment for “uncovered” employees.

### State Healthcare Reform Tracking

A Commonwealth Fund [clickable map](#) identifies states that have secured or are seeking Section 1332 innovation waivers to partially finance their reinsurance programs. Additional state-by-state information identifies ones that are considering or have enacted individual health insurance mandates, health coverage subsidies, short-term health insurance regulations, coverage exemptions or “marketplace competition” like public options.

### California

San Francisco has posted the 2020 HCE rates required by the HCSO. The HCSO applies to all employers with a valid San Francisco business registration certificate and at least 20 employees in any location if at least one employee works in San Francisco. The HCE is the minimum amount employers must spend on healthcare for each hour worked by a HCSO-covered employee. Here are the 2020 HCE rates:

- Large employers with 100 or more employees will pay a rate of \$3.08, up from \$2.93 in 2019.

- Medium employers with 20–99 workers and nonprofits with 50–99 employees will pay a rate of \$2.05, up from \$1.95 in 2019.

Employers with fewer than 20 employees and nonprofits with fewer than 50 employees are exempt.

### Florida

Florida has amended its multiple-employer welfare arrangement (MEWA) law to align with the Trump administration's 2018 AHP rules ([29 CFR § 2510.3-5](#)). In addition to recognizing MEWAs established by a trade, industry or professional association of employers, the new Florida law ([2019 Ch. 129](#)) permits groups to form for the purpose of purchasing insurance, as long as member employers meet either of these conditions:

- Are in the same trade, industry, line of business or profession
- Have a principal place of business in the same metropolitan area or region of the state

A portion of the 2018 federal AHP rules (known as Pathway 2 AHPs) is on hold due to pending litigation. If federal regulations are ultimately struck down, the state law will be inconsistent with federal law, raising issues about ERISA compliance for Florida AHPs formed based on the new state law.

### New Jersey

New Jersey will establish its own state-based health insurance exchange for individual and small group plans beginning in 2021, leaving the [Healthcare.gov](#) federally facilitated exchange that the state has used since 2014. Gov. Phil Murphy [said](#) the new law ([2019 Ch. 141](#)) will give New Jersey greater control over its health insurance market and stronger protections against federal efforts to dismantle the ACA. Program funding will come from transferring the current federal exchange user fee (currently 3.5% of premiums) to the state. The governor [notified](#) CMS in March that the commissioner of New Jersey's [Department of Banking and Insurance](#) would submit a [Blueprint Application](#) for the state exchange to become operational in 2021.

### Vermont

Employers subject to Vermont's [Health Care Fund Contribution Assessment](#) have updated guidance ([Pub. FS-1144](#)) on how to calculate and report the quarterly tax. Employers face this assessment if they have more than four "uncovered" full-time equivalent (FTE) employees in the state, including some part-time and seasonal workers. Along with full-time employees who aren't offered coverage, eligible employees who decline coverage but have no other coverage or enroll in Medicaid meet the definition of "uncovered." The quarterly assessment per uncovered FTE employee is \$167.02 for quarters ending in 2019. Wage and health coverage information is due to tax regulators within 25 days after the end of each calendar quarter.

## DRUG COSTS

State activity on drug costs slowed in the third quarter. However, the US Food & Drug Administration (FDA) announced it will introduce a pathway for states to import drugs from outside of the US. A notice, currently under review, may be available before year-end. New Hampshire is the most recent state to

establish registration and regulation for PBMs and will study enhancing transparency in drug costs and rebate programs.

### Importation

A [Safe Importation Action Plan](#) proposed by the US Department of Health and Human Services (HHS) and the FDA describes two pathways for importing lower-cost drugs from foreign markets. Pathway 1 would allow states, wholesalers or pharmacists to submit demonstration project plans to HHS, outlining how they would import [Health Canada](#)-approved drugs that comply with the federal [Food, Drug and Cosmetic Act](#). Pathway 2 would permit manufacturers to import FDA-approved drugs sold in foreign countries into the US, potentially making those drugs available at lower prices than the US versions. HHS [announced](#) the plan as part of the Trump administration's overall strategy to reduce prescription drug prices.

### New Hampshire

Beginning Jan. 1, 2020, PBMs can no longer operate in New Hampshire unless registered with state. The state's insurance commissioner is charged with adopting rules outlining the registration process and handling consumer complaints. The new law ([2019 Ch. 320](#)) requires pharmacy contracts to include specific provisions on pricing, reimbursements and pharmacist appeals. PBMs will be subject to reporting and regulatory examination. The measure also establishes a commission to study increasing transparency in drug costs and rebate programs, with a report due to lawmakers by Nov. 1, 2020.

## PRIVACY

As new technologies allow quick access to personal information, including health and welfare plan data, states like California are seeking ways to protect the privacy of those records. California has limited its new privacy law's impact on data that employers gather for employment purposes, but only for one year while lawmakers consider other potential restrictions.

### California

The sweeping California Consumer Privacy Act (CCPA) gives state residents the right to control the use of their personal information, including what businesses collect, where it comes from, and how it's used and shared. Consumers also have the right to stop or limit the collection, use, sharing or selling of their information. A recent amendment ([2019 Ch. 763](#)) clarifies and limits the CCPA's application to data that employers gather for employment purposes. Under the amendment, CCPA rights relating to access, deletion and opt-out don't apply to employee information collected by an employer.

The amendment also creates an exemption for information that is necessary to administer benefits, but only if the information is used solely for that purpose. The employment and benefit data exemptions expire after one year, so they will no longer apply unless renewed or made permanent in the 2020 legislative session.

## TELEHEALTH

The Psychology Interjurisdictional Compact ([PSYPACT](#)) Commission, the interstate agency facilitating telepsychology practice, has finalized its bylaws and rules. New Hampshire joined PSYPACT Sept. 8,

bringing to 12 the [number of states that have joined](#) or will soon do so. Meanwhile, California set reimbursement parity requirements beginning in 2021 for health plans that offer telehealth coverage.

### Telepsychology

The PSYPACT Commission has finalized its [bylaws](#) and [rules](#), effective Oct. 9, easing the way for telepsychology and temporary in-person practice of psychology across state boundaries. Licensed healthcare providers can apply to practice telepsychology and/or conduct temporary face-to-face sessions in PSYPACT states, depending on the certificate issued.

### California

New telehealth legislation ([2019 Ch. 867](#)) requires insurers and HMOs covering telehealth services to provide parity with in-person services under health plans issued on or after Jan. 1, 2021. A plan must provide telehealth coverage on the same basis and to the same extent as coverage for in-person diagnosis, consultation or treatment. Health plans must reimburse identical services — as determined by the provider’s description — at the same rate, regardless of whether the services are provided in person or through telehealth. In addition, telehealth services must be subject to the same deductible and annual or lifetime dollar limit as in-person services. Coverage can’t be limited to only services from select corporate telehealth providers.

### New Hampshire

Effective Sept. 8, a New Hampshire law ([2019 Ch. 203](#)) authorizes the state’s participation in PSYPACT. New Hampshire is the 12th state to enact PSYPACT legislation, joining Arizona, Colorado, Delaware, Georgia, Illinois, Missouri, Nebraska, Nevada, Oklahoma, Texas and Utah.

## INSURANCE

In the third quarter of 2019, states produced a wide array of group health insurance laws and regulatory guidance on balance bills, including “surprise” medical bills; ACA-related provisions; health plan assessments; rating restrictions; and health coverage mandates.

### Balance Bills

California has enacted a measure that requires insurers to cover out-of-network air ambulance services as in-network and prohibits balance billing above in-network cost sharing. New York regulators touted the success of the state’s 2015 law to deter [surprise medical bills](#).

**California.** A new law ([2019 Ch. 537](#)) requires insurers to cover out-of-network air ambulance services as in-network services. Individuals can’t be charged for amounts above the in-network cost-sharing amount, which must count toward the deductible and annual out-of-pocket maximum. Any payment disputes must be settled between the insurer and the provider through dispute resolution or in the courts. The law applies to health policies issued, amended or renewed on or after Jan. 1, 2020.

**New York.** New York’s law to prevent surprise medical bills has saved patients more than \$400 million for emergency services alone, according to a Department of Financial Services [report](#). The law restricts balance billing when services are performed by an out-of-network doctor at a network hospital or

ambulatory surgical center or when a network doctor refers an insured individual to an out-of-network provider. The law protects all consumers from emergency care bills.

Healthcare billing guidelines in the law are supplemented by an [independent dispute resolution](#) (IDR) system for providers and insurers. In addition, individuals who are uninsured or whose employer or union self-insures may dispute a surprise bill for a doctor's services at a hospital or ambulatory surgical center through the state's [IDR system for individuals](#). According to the governor's [press release](#), from 2015 to 2018, 1,486 disputes involving surprise bills were submitted to the IDR. Of the 815 decisions rendered, health plans prevailed in 13% of the cases, providers prevailed in 48% of the cases and 39% were split decisions.

### ACA Provisions, Assessment, Rating Restrictions

Delaware aligned its insurance laws to mirror the ACA's preexisting condition ban and rating restrictions in the small group and individual markets. Florida adjusted its [essential health benefit](#) (EHB) benchmark standards, allowing insurers and HMO's in the state to use one or a combination of other states' benchmarks. Maryland increased its premium stabilization assessment on insured health plans, effective Oct. 1. New York issued guidance banning premium rate guarantees and other rating practices.

**Delaware.** Delaware legislation ([2019 Ch. 186](#)) incorporates portions of the ACA into state law. The new provisions ban preexisting condition exclusions and limitations, require guaranteed issue and availability of coverage, and set permitted rating factors for individual and small group plans. In addition, certain ACA consumer protections like the nondiscrimination rules for [Section 1557](#) and the EHB requirements will follow the federal law and regulations in effect on Jan. 1, 2018, ignoring any later changes.

**Florida.** A new Florida law ([2019 Ch. 129](#)) allows insured plans and HMOs in the state to comply with the ACA's EHB requirements by using any state's benchmark plan or combining multiple states' benchmark plans. A plan must include at least one service or coverage under each of the 10 ACA-required EHB categories. The legislation also bans preexisting condition exclusions in insured plans (excluding short-term health plans) in the event the ACA is repealed by Congress or invalidated by the US Supreme Court.

**Maryland.** Maryland's market-stabilization assessment on health insurers will increase by 1% from 2020 through 2023, under legislation that took effect Oct. 1, 2019 ([2019 Chs. 597](#) and [598](#)). The measures also extend the initial 2.75% health insurance provider fee for calendar years 2019 through 2023, for a total assessment of 3.75%. The assessment doesn't apply directly to employers, but insurers probably will pass the fee to employers that purchase coverage in the state. Employers should check with their insurers and may see an increase in premium costs to offset the charge.

**New York.** Recent regulatory [guidance](#) explains that health insurers in New York may not extend new business discounts, rate guarantees or similar premium modifications in the community-rated individual and small group market or the experience-rated large group market. Insurance rating variables can't result in excessive, inadequate or unfairly discriminatory premium rates, which instead must apply consistently to all similarly situated groups and across all rating years. All rate filings for such groups must have a one-year term, and multiyear ratings for large group comprehensive policies is not permitted.

The guidance warns insurers against having advertisements, solicitations and sales materials with misleading or deceptive words, phrases or statements that suggest new business discounts or rate guarantees. Carriers with existing rate guarantees on comprehensive health insurance policies cannot honor those guarantees for 2020 renewals and must bring any existing arrangements into compliance. Whether these restrictions apply to stop-loss coverage for self-insured plans is unclear.

### Health Coverage Mandates

California and New Hampshire have enacted laws requiring standard fertility-preservation services for covered individuals who need treatments that may affect fertility. New Hampshire's law will also require comprehensive infertility treatment. Tennessee guidance explains how its autism mandate — including coverage for applied behavior analysis (ABA) — must comply with the federal [Mental Health Parity and Addiction Equity Act](#) (MHPAEA).

**California.** California HMOs must provide standard fertility-preservation services when surgery, radiation, chemotherapy or another necessary medical treatment affecting reproductive organs or processes may directly or indirectly impair fertility — a condition known as “iatrogenic infertility.” Legislation ([2019 Ch. 853](#)) adds standard fertility-preservation services to the definition of basic healthcare services that HMOs must cover. The law defines standard fertility-preservation services as procedures consistent with the established medical practices and professional guidelines published by the American Society of Clinical Oncology or the American Society for Reproductive Medicine.

**New Hampshire.** Beginning Jan. 1, 2020, a New Hampshire infertility coverage mandate ([2019 Ch. 307](#)) will require group health plans to cover medically necessary treatments for infertility and benefits related to procuring donor eggs, sperm and embryos. Plans also must cover fertility preservation when an expected medical treatment could cause infertility. Cost sharing, benefit maximums, waiting periods and other coverage limitations can't exceed those for other covered benefits. Insurers cannot impose preexisting condition exclusions, waiting periods, or limits on the number of attempts, dollar amounts or patient age. The mandate applies to insured plans issued or renewed in New Hampshire or [covering New Hampshire residents](#) on or after Jan. 1, 2020. The law doesn't apply to self-insured ERISA plans or plans available through the state's small group health insurance exchange.

**Tennessee.** Tennessee insurers must cover autism treatments — including ABA — that are medically necessary and appropriate but not experimental, according to a regulatory insurance bulletin ([19-01](#)). A Tennessee law ([Tenn. Code Ann. § 56-7-2360](#)) amended effective Jan. 1, 2019, requires mental health coverage to comply with the federal MHPAEA's parity requirements for treatments of mental disorders listed in the [Diagnostic and Statistical Manual](#) or [International Classification of Diseases](#). Tennessee first required coverage for treatment of autism spectrum disorders in 2006 for plans that cover treatments for other neurological disorders ([Tenn. Code Ann. § 56-7-2367](#)).

The law applies to individual and group insurance policies issued in Tennessee, including short-term and limited-duration policies; grandfathered plans that cover mental health benefits; and MEWAs. By March 1, 2020, carriers must certify to the state Department of Commerce and Insurance that they have completed a comprehensive compliance review related to the new mandate.

## LEAVE LAWS

Leave laws remain a focus in state legislatures, regulatory agencies and courts. In the third quarter, unpaid leave laws expanded; regulators addressed paid family and medical leave (PFML); and other types of paid leave, including vacation accruals in Colorado and sick leave in Texas, received attention.

### Unpaid Leave

A new California law increases unpaid leave days for organ and bone marrow donation. New York has expanded protections — including reasonable leave — for victims of domestic violence. Puerto Rico now requires employers to provide up to 15 unpaid days for violence victims.

**California.** Starting in 2020, California employers will have to provide up to 30 days of unpaid leave per year for employees who become organ donors, under a new law ([2019 Ch. 316](#)). The unpaid time off is in addition to the paid leave of five days for bone marrow donation and 30 days for organ donation currently required ([Cal. Lab. Code § 1510](#)). Employees must provide documentation for the leave. The law also provides specific insurance protections for organ donors.

An employer may require an employee to take up to five days of earned but unused sick leave, vacation or paid time off for bone marrow donation and up to two weeks for organ donation before providing the state-mandated bone marrow or organ donation leave. The law prohibits the time off from running concurrently with leave taken under the federal Family and Medical Leave Act (FMLA). However, recent US Department of Labor (DOL) [guidance](#) prohibits delaying designation of qualifying FMLA leave.

**New York.** New York domestic violence victims will have expanded employment protections — including “reasonable” leave rights — under legislation ([2019 Ch. 176](#)) that takes effect Nov. 18. The law makes domestic violence victims a class protected from discrimination under the state’s [Human Rights Law](#) and specifies what leave and accommodations employers must provide to victims. Other provisions define domestic violence, outline nondiscrimination protections, set out reasons for leave and detail employee notice requirements. The law applies based on employee’s work location, regardless of residence.

**Puerto Rico.** Effective Aug. 1, employees in Puerto Rico can annually take up to 15 unpaid days of “special leave” to address situations arising from violent acts perpetrated against them or a spouse, child, parent, or another minor, elderly person or person with a disability in the employee’s care. The law — [2019 P.R. Laws 83](#) (Spanish) — specifically permits special leave for domestic violence, sexual harassment and assault, lewd acts, stalking, and child abuse.

Unused leave doesn’t carry over. Employers can require at least two business days’ advance written notice (except in emergencies) and documentation after the employee’s return. Options for intermittent leave and other reasonable accommodations must be available, and job protections apply.

### Paid Family and Medical Leave (PMFL)

Regulators in three states — Colorado, Massachusetts and New York — have addressed PFML issues. Colorado sought public comment as a task force develops a PFML proposal for state lawmakers.



Massachusetts has modified the PFML contribution calculation to use the dates wages are paid rather than earned. New York has announced its paid family leave (PFL) contributions and benefits for 2020.

**Colorado.** The state Department of Labor and Employment (DLE) [sought public comment](#) by Sept. 25 on issues the Family and Medical Leave Task Force should consider when making recommendations for establishing a paid family and medical leave program. Under legislation authorizing the task force ([2019 Ch. 352](#)), the program or policy should allow workers to take a specified amount of leave with partial wage replacement for these purposes:

- Bond with a new child
- Care for their own or a loved one's serious mental or physical medical illness
- Handle matters arising from a military exigency
- Address needs related to domestic violence, stalking, or sexual assault.

The task force will review funding, benefits, job protections, structure, sustainability, interaction with other types of leave and more issues. Final recommendations are due to the legislature by Jan. 8, 2020.

**Massachusetts.** Massachusetts has modified the calculation of PFML contributions, which became subject to withholding Oct. 1, according to a recent [notice](#). Rather than base contributions on services performed on or after Oct. 1, employers should calculate contributions using wages paid on or after that date. PFML contributions withheld from employees' wages — and employer payments in some cases — are due to the Department of Revenue 30 days after the end of each calendar quarter. This is the same schedule for making unemployment contributions. The state's [website](#) includes more detail on calculating contributions.

**New York.** New York will continue its four-year phase-in of paid family leave (PFL) benefits, with updates posted on the [state website](#). Employees taking eligible PFL that begins in 2020 will receive 60% of their average weekly wages, up to the maximum weekly benefit of \$840.70 — an increase from the 2019 maximum benefit of \$746.41. The 2020 leave limit will remain at 10 weeks. The weekly benefit and leave duration will climb again in 2021. The PFL program is fully funded by employee contributions of 0.27% of gross pay, up to a maximum annual contribution of \$196.72 in 2020. This marks an increase from the 2019 contribution of 0.153% of gross pay, up to a maximum contribution of \$107.97.

### Other Paid Leave

Other paid leave issues seeing state activity included vacation pay and mandated sick leave. In Colorado, a state appeals court held that employers' vacation policies can set requirements for terminating employees to receive a final payout of accrued, unused vacation. Texas failed to pass legislation that would have preempted local sick leave mandates. However, three cities — [Austin](#), [Dallas](#), and [San Antonio](#) — face legal challenges in the courts and their mandates are currently on hold. But the San Antonio law is expected to take effect Dec. 1. Dallas has said it will waive enforcement until April 1, 2020.

**Colorado.** Terminating Colorado employees do not have to receive payment of accrued, unused vacation if the employer's policies clearly outline how paid time off is earned and under what circumstances it will be forfeited, a state appeals court ruled (*Nieto v. Clark's Market, Inc.*, No. 18CA1154 (Colo. Ct. App. 4th Div., June 27, 2019)). The court noted that the Colorado Wage Act ([Colo. Rev. Stat. § 8-4-101 et. seq.](#)) requires payout at termination of "vacation pay earned in accordance with the terms of any agreement." In this case, the employer's policy stated that a discharged employee or an employee quitting with less than two weeks' notice "forfeits all earned vacation pay benefits." Because the employee was fired, the employer wasn't obligated to pay her accrued, unused vacation. The ruling essentially negates an earlier regulatory interpretation suggesting such forfeitures were prohibited.

**Texas.** State lawmakers failed to pass legislation ([SB 2487](#)) blocking local paid sick leave mandates, but state court challenges may achieve the same result. Three Texas cities — Austin, Dallas and San Antonio — have enacted laws requiring employees in the city earn one hour of paid sick time for every 30 hours worked. All three now face legal challenges, claiming the laws violate the [Texas Constitution's](#) prohibition against passing any ordinance inconsistent with state law. The primary argument is that these ordinances are inconsistent with a specific [Texas Minimum Wage Act](#) provision.

A state appeals court [halted](#) implementation of Austin's [ordinance](#), and the case is now pending before the [Texas Supreme Court](#) (*City of Austin v. Texas Ass'n of Business*, No. 19-0025). The Dallas [ordinance](#) went into effect on Aug. 1, but city officials agreed to delay enforcement until April 2020 while a [lawsuit](#) seeking to overturn the mandate unfolds (*ESI/Employee Solutions v. City of Dallas*, No. 4:19-cv-00570 (E.D. Tex.)). San Antonio officials [agreed to delay](#) the city's 2018 [ordinance](#) until Dec. 1 after facing a similar [lawsuit](#) (*Associated Builders & Contractors of South Texas, Inc. v. City of San Antonio*, No. 2019CI13921 (Bexar County 408th Jud. Ct., July 15, 2019)). The litigation was stayed while a city commission worked with business groups to recommend changes. City officials have now enacted a [revised ordinance](#), with an enforcement grace period for violations other than retaliation until April 2020.

## EMPLOYMENT

California and Maine have enacted employment laws with benefit implications. A new California law may reclassify some independent contractors as employees. Another California measure requires employers to notify workers in the state before plan year-end if they face forfeiting money in their pretax flexible spending arrangements (FSAs). In addition, the Los Angeles County Metro Transit Administration (LACMTA) has begun to implement a pretax transit benefit mandate authorized by the state in 2018. Maine will require reasonable accommodations for pregnancy-related conditions.

### California

Starting Jan. 1, 2020, employers in California will have to reclassify some independent contractors as employees under a new law ([2019 Ch. 296](#)), but certain sectors and occupations remain exempt. The legislation codifies and expands a 2018 decision by California's Supreme Court (*Dynamex Operations West, Inc. v. Superior Court*, 416 P.3d 1 (Cal. 2018)). Workers are presumed to be employees for wage and benefit purposes rather than independent contractors, unless the hiring entity can show the working relationship meets the three conditions — known as the "ABC" test — established in *Dynamex*. The

California law diverges from the approach to independent contractor status taken by the [DOL](#) and the [National Labor Relations Board](#).

### California

Starting in 2020, California employers will have to notify employees of deadlines for using money in health, dependent care or adoption assistance FSAs. Notice must take two forms, such as electronic delivery, including email or text; by telephone; through the postal service; or in person. The new law ([2019 Ch. 195](#)) contains no details on timing other than requiring notice before plan year-end, leaving questions whether annual open-enrollment disclosures or periodic FSA vendor notices will suffice. Other questions include whether ERISA would preempt the state law for health FSAs and whether this law applies only to midyear forfeitures. Employers with workers facing forfeiture of FSA funds in 2020 may want to include a notice in open-enrollment materials if possible.

### California — Los Angeles

The LACMTA will move ahead to implement a pretax commuter benefits ordinance authorized by California legislation enacted last year ([2018 Ch. 173](#)). The law allows LACMTA to require employers with 50 or more full-time employees at a worksite in the LACMTA operating area to offer pretax commuter benefits, up to the limits allowed by federal law. The Planning and Programming Committee has posted a [presentation](#) outlining the steps to follow through on the mandate. The ordinance is expected to take effect in June 2020, but employers will have six months to comply and a full year before enforcement begins.

### Maine

Recently enacted Maine legislation ([2019 Ch. 490](#)) amends the state's sex-discrimination law ([Me. Rev. Stat. tit. 5 § 4572-A](#)) to require reasonable accommodations for pregnancy or childbirth-related conditions, including lactation. Accommodations may include more frequent or longer breaks; temporary work schedule modification, relief from lifting requirements, or transfer to less strenuous or hazardous work; seating or equipment; and provisions for lactation. A pregnant employee doesn't have to be disabled to qualify for these modifications. The legislation took effect Sept. 19.

## DOMESTIC PARTNERSHIP AND MARRIAGE

Two states — California and South Carolina — took action on domestic partnership and marriage. Starting in 2020, heterosexual and gay adults of any age will be able to register as domestic partners in California. South Carolina no longer allows couples to establish common-law marriages in the state, but marriages established before July 24 will continue to be recognized.

### California

Beginning Jan. 1, domestic partners no longer need to be of the same sex — or at least age 62 if opposite sex — to register in California and gain all the same state-law benefits as spouses. Though registered domestic partners [don't qualify](#) for spousal treatment under federal law, the state law ([2019 Ch. 135](#)) grants them family leave under the [California Family Rights Act](#) and tax-favored treatment for employer-provided coverage. Insurance policies issued in the state must treat spouses and registered domestic partners the same. In addition, group health policies issued in other states generally must extend equal coverage to California registered domestic partners. California is one of a handful of states that didn't

eliminate domestic partner registration after the US Supreme Court [overturned](#) Section 3 of the Defense of Marriage Act, which had recognized only heterosexual marriages under federal law (*United States v. Windsor*, 570 U.S. 744 (2013)).

### South Carolina

South Carolina no longer allows couples to establish common-law marriages in the state, as a result of a state supreme court ruling ([Stone v. Thompson](#), No. 27908 (S.C. Sup. Ct. July 24, 2019)). The court concluded that common-law marriage’s “foundations have eroded with the passage of time, and the outcomes it produces are unpredictable and often convoluted. Accordingly, we ... abolish it.” Common-law marriages established before the court’s ruling remain valid. But the state’s high court noted that those marriages can be considered valid only if clear and convincing evidence shows the couple’s mutual assent to be married.

## RELATED RESOURCES

### Individual Health Insurance Mandate Reporting

#### Non-Mercer Resources

- [Notice 2019-04](#) (DC Office of Tax and Revenue, Aug. 9, 2019)
- [D.C. Code §§ 47-5101 to 47-5109](#), Individual Taxpayer Health Insurance Responsibility Requirement (DC Council)
- [DC Office of Tax and Revenue](#)
- [MyTax.DC.gov](#) (DC Office of Tax and Revenue)
- [Minimum Creditable Coverage Rules](#) (956 Mass. Code Regs. 5)
- [NJ Health Insurance Mandate Guidance](#) (New Jersey Treasury Department)
- [Practitioner's E-File Page](#) (New Jersey Treasury Department)
- [Internal Revenue Code § 5000A](#)
- [Q&As on Information Reporting by Health Coverage Providers \(Section 6055\)](#) (IRS)
- [About Form 1094-B, Transmittal of Health Coverage Information Returns](#) (IRS)
- [About Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns](#) (IRS)
- [About Form 1095-B, Health Coverage](#) (IRS)
- [About Form 1095-C, Employer-Provided Health Insurance Offer and Coverage](#) (IRS)

### **Mercer Law & Policy Resources**

- [Massachusetts Employers Need To Gear Up for Health Plan Reporting](#) (Oct. 1, 2019)
- [Bipartisan Bills Would Simplify ACA Employer-Reporting Requirements](#) (Aug. 12, 2019)
- [New Jersey Posts Update on Health-Coverage Reports Due in 2020](#) (April 16, 2019)
- [Trump Administration Adjusts Course on ACA Case](#) (March 27, 2019)

### **State Health Coverage Initiatives**

#### **Non-Mercer Resources**

- [Section 1332 Innovation Waivers](#) (Centers for Medicare & Medicaid Services)
- [Health Care Security Ordinance Resources](#) (San Francisco Office of Labor Standards Enforcement)
- [Clickable Map: What Is Your State Doing to Affect Access to Adequate Health Insurance?](#) (Commonwealth Fund, Sept. 6, 2019)
- [2019 Ch. 129](#) (Florida Legislature, June 25, 2019)
- [Final Rule Defining Employer for ERISA Association Health Plans](#) (Federal Register, June 21, 2018)
- [Healthcare.gov](#) (Centers for Medicare & Medicaid Services)
- [State-Based Exchange Press Release](#) (New Jersey Governor's Office, June 27, 2019)
- [2019 Ch. 141](#) (New Jersey Legislature, June 28, 2019)
- [Letter of Intent To Establish State-Based Health Benefit Exchange](#) (New Jersey Governor's Office, March 22, 2019)
- [Blueprint for Approval of State-Based Health Insurance Exchanges](#) (US Centers for Medicare & Medicaid Services)
- [Vt. Stat. Ann. tit. 32 §§ 10502–10505](#), Health Care Fund Contribution Assessment (Vermont Legislature)
- [For Employers: Health Care Fund Contribution Assessment \(Pub. FS-1144\)](#) (Vermont Dep't of Taxes, Aug. 5, 2019)

### **Mercer Law & Policy Resources**

- [Vermont Reissues Employer Health Plan Assessment Reporting Guidelines](#) (Sept. 24, 2019)
- [San Francisco Updates Contractors' Health Standards, Pay Rates](#) (June 27, 2019)
- [San Francisco's Annual Health Care Expenditure Report Due April 30](#) (March 26, 2019)

### **Drug Costs**

#### **Non-Mercer Resources**

- [2019 Ch. 320](#) (NH General Court, Aug. 12, 2019)

#### **Mercer Law & Policy Resources**

- [Agencies Won't Enforce ACA Rule on Drug Coupons and Out-of-Pocket Costs](#) (Sept. 3, 2019)
- [Roundup of Selected State Health Developments — Second-Quarter 2019](#) (July 29, 2019)

#### **Other Mercer Resources**

- [White House Offers Plan To Lower Drug Prices](#) (May 17, 2018)

### **Privacy**

#### **Non-Mercer Resources**

- [2019 Ch. 763](#) (California Legislature, Oct. 11, 2019)

#### **Mercer Law & Policy Resources**

- [Top 10 Compliance Issues for 2020 Health and Fringe Benefit Planning](#) (June 25, 2019)
- [California's Data Privacy Law Appears Not To Reach HIPAA-Covered Group Health Plans, but Other Impacts Unclear](#) (April 8, 2019)

### **Telehealth**

#### **Non-Mercer Resources**

- [PSYPACT Website](#)
- [Psychology Interjurisdictional Compact Bylaws](#) (PSYPACT, July 22, 2019)
- [Proposed PSYPACT Rules](#) (PSYPACT, July 22, 2019)
- [2019 Ch. 867](#) (California Legislature, Oct. 13, 2019)
- [2019 Ch. 203](#) (New Hampshire General Court, July 10, 2019)

#### **Mercer Law & Policy Resources**

- [Roundup of Selected State Health Developments — Second-Quarter 2019](#) (July 29, 2019)

### Other Mercer Resources

- [Telemedicine — Utilization and Quality Gaps Are Hurdles](#) (July 11, 2019)
- [DIY Mental Health: Survey Finds Employers Taking Action To Improve Access to Care](#) (May 23, 2019)

### Insurance

#### Non-Mercer Resources

- [Surprise Medical Bills and Emergency Services](#) (New York Dep't of Financial Services)
- [2019 Ch. 537](#) (California Legislature, Oct. 7, 2019)
- [Report on the Independent Dispute Resolution Process](#) (New York Dep't of Financial Services, Sept. 17, 2019)
- [Press Release on New York's Surprise Medical Bill Law](#) (New York Governor's Office, Sept. 17, 2019)
- [2019 Ch. 186](#) (Delaware Code Online, Aug. 6, 2019)
- [ACA Section 1557 Resources](#) (US Department of Health and Human Services)
- [2019 Ch. 129](#) (Florida Legislature, June 25, 2019)
- [Information on Essential Health Benefits Benchmark Plans](#) (Center for Consumer Information & Insurance Oversight)
- [2019 Ch. 598](#) (Maryland General Assembly, May 25, 2019)
- [2019 Ch. 597](#) (Maryland General Assembly, May 25, 2019)
- [Guidance on Rate Guarantees and New Business Discounts](#) (New York Dep't of Financial Services, July 3, 2019)
- [Mental Health Parity and Addiction Equity Act](#) (US Center for Consumer Information & Insurance Oversight)
- [2019 Ch. 853](#) (California Legislature, Sept. 19, 2019)
- [2019 Ch. 307](#) (New Hampshire General Court, Aug. 1, 2019)
- [Bulletin Ins. No. 08-014-AB](#) (New Hampshire Insurance Dep't, March 4, 2008)
- [Bulletin 19-01](#) (Tennessee Dep't of Commerce and Insurance, Aug. 1, 2019)
- [Tenn. Code Ann. § 56-7-2360](#) (Tennessee Code)

- [Tenn. Code Ann. § 56-7-2367](#) (Tennessee Code)
- [DSM 5: Diagnostic and Statistical Manual of Mental Disorders](#) (American Psychiatric Association)
- [ICD 11: International Classification of Diseases](#) (World Health Organization)

#### **Mercer Law & Policy Resources**

- [Massachusetts Employers Need To Gear Up for Health Plan Reporting](#) (Oct. 1, 2019)
- [Roundup of Selected State Health Developments — Second-Quarter 2019](#) (July 29, 2019)
- [Senate Package Targets Healthcare Costs, Surprise Medical Bills](#) (June 12, 2019)
- [Litigation, Legislation Leave AHP Guidance in Flux](#) (May 2, 2019)

#### **Other Mercer Resources**

- [Texas Judge Declares ACA Invalid; Appeals Planned](#) (Dec. 17, 2018)

#### **Leave Laws**

##### **Non-Mercer Resources**

- [2019 Ch. 316](#) (California Legislature, Sept. 20, 2019)
- [Cal. Lab. Code § 1510](#) (California Legislative Information)
- [FMLA 2019-1-A](#) (US Dep't of Labor, March 14, 2019)
- [2019 Ch. 176](#) (New York Senate, Aug. 20, 2019)
- [New York State Human Rights Law](#) (N.Y. Exec. Code §§ 290-301) (New York Senate)
- [2019 PR Laws 83](#) (Spanish) (Puerto Rico Government, July 29, 2019)
- [Request for Comments on PFML](#) (Colorado Register, Aug. 25, 2019)
- [2019 Ch. 352](#) (Colorado Legislature, May 30, 2019)
- [PFML Notice](#) (Massachusetts Dep't of Family and Medical Leave, July 26, 2019)
- [Family and Medical Leave Contribution Rates for Employers](#) (Massachusetts Dep't of Family and Medical Leave, July 11, 2019)
- [Austin Earned Sick Time Website](#) (Austin Human Resources Dep't)
- [Dallas Paid Sick Leave Website](#) (Dallas Fair Housing & Human Rights Office)



- [San Antonio Sick and Safe Leave Website](#) (San Antonio Metropolitan Health District)
- [Nieto v. Clark's Market, Inc.](#), No. 18CA1154 (Colo. Ct. App. 4th Div., June 27, 2019)
- [Colorado Wage Act](#) (Colo. Rev. Stat. § 8-4-101–123) (Colorado Div. of Labor Standards and Statistics)
- [SB 2487](#) (Texas Legislature, May 17, 2019)
- [Texas Constitution](#) (Texas Legislative Council, July 3, 2018)
- [Austin Earned Sick Time Ordinance No. 20180215-049](#) (Austin, TX, City Government, Feb. 15, 2018)
- [Texas Ass'n of Bus. v. City of Austin](#), No. 3-18-00445-CV (Tex. Ct. App., Nov. 16, 2018)
- [City of Austin v. Texas Association of Business](#), No. 19-0025 (Tex. Sup. Ct., Jan. 10, 2019)
- [Dallas Paid Sick Leave Ordinance](#) (Dallas City Code Ch. 20)
- [ESI/Employee Solutions v. City of Dallas](#), No. 4:19-cv-00570 (E.D. Tex. July 30, 2019)
- [Press Release: Judge Approves Order To Move Implementation of San Antonio Paid Sick Leave Ordinance](#) (San Antonio Government and Public Affairs Dep't, July 24, 2019)
- [San Antonio Earned Paid Sick Time Ordinance](#) (City of San Antonio, Aug. 16, 2018)
- [San Antonio Revised Sick and Safe Leave Comparison Chart](#) (City of San Antonio, Sept. 23, 2018)
- [Associated Builders & Contractors of South Texas, Inc. v. City of San Antonio](#), No. 2019CI13921 (Bexar County 408th Jud. Ct., July 15, 2019)

#### **Mercer Law & Policy Resources**

- [ME, NV Paid Accrued Leave Mandates Expand State Paid Sick Leave Law Totals](#) (July 1, 2019)
- [Massachusetts Delays, Increases Paid Family and Medical Leave Contribution](#) (June 14, 2019)
- [Family and Medical Leave Designations Can't Be Delayed, DOL Says](#) (May 31, 2019)
- [2019 State-Mandated Short-Term Disability Contributions and Benefits](#) (Jan. 31, 2019)

#### **Employment**

##### **Non-Mercer Resources**

- [2018 Ch. 173](#) (California Legislature, Aug. 20, 2018)
- [Commuter Tax Benefit Ordinance Presentation](#) (Los Angeles County Metro, June 19, 2019)

- [2019 Ch. 296](#) (California Legislature, Sept. 19, 2019)
- [Dynamex Operations West, Inc. v. Superior Court](#), 416 P.3d 1 (Cal. 2018)
- [Opinion Letter FLSA 2019-6](#) (DOL, April 29, 2019)
- [General Counsel Advice Memorandum \(Adv. 13-CA-163062\)](#) (NLRB, April 16, 2019)
- [2019 Ch. 195](#) (California Legislature, Aug. 30, 2019)
- [2019 Ch. 490](#) (Maine Legislature, June 27, 2019)
- [5 Me. Rev. Stat. § 4572-A](#) (Maine Legislature)

#### **Mercer Law & Policy Resources**

- [Some Independent Contractors in California Will Become Employees](#) (Sept. 26, 2019)
- [Independent Contractor or Employee? DOL, NLRB Weigh Online Marketplaces](#) (May 16, 2019)

#### **Domestic Partnership and Marriage**

##### **Non-Mercer Resources**

- [Final Rules: Definition of Terms Relating to Marital Status](#) (Federal Register, Sept. 2, 2016)
- [2019 Ch. 135](#) (California Legislature, July 30, 2019)
- [California Family Rights Act Fact Sheet](#) (California Dep't of Fair Employment and Housing, March 21, 2019)
- [Obergefell v. Hodges](#) 135 S. Ct. 2584 (2015)
- [Stone v. Thompson](#), No. 2017-000227 (S.C. Sup. Ct. July 24, 2019)

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